

A RESOLUTION to establish guidance to aid DRBC and the regulated community in determining the appropriate financial penalty or settlement in lieu of penalty for proven or suspected violations, respectively, of the *Delaware River Basin Compact* or rules, regulations or orders of the Commission.

WHEREAS, Section 14.17 of the *Delaware River Basin Compact* (“the *Compact*”) provides that a person, association or corporation who violates or attempts or conspires to violate a provision of the *Compact* or a rule, regulation or order of the Commission may be liable for a penalty of as much as \$1,000 for each offense and \$1,000 per day for a continuing violation, attempt or conspiracy to be fixed by a court of competent jurisdiction; and

WHEREAS, Section 2.7.8 of Article 7 of the Commission’s *Rules of Practice and Procedure* (RPP) provides that a possible violator may request settlement of a penalty proceeding by agreement and further provides that if the Executive Director determines that settlement in lieu of a penalty is in the best interest of the Commission the Executive Director may submit to the Commission a proposed settlement agreement in lieu of a penalty; and

WHEREAS, Section 2.7.6 of the RPP provides a list of factors that the Commission will consider in determining the amount of any penalty that the Commission could ask a court to impose or that the Commission might seek through settlement; and

WHEREAS, these factors include (but are not limited to): whether previous violations have occurred, whether the violation was willful and deliberate; whether the violation caused adverse environmental consequences and the extent of any harm; and whether the failure to comply was economically beneficial to the violator; and

WHEREAS, since 1996, DRBC’s sister agency the Susquehanna River Basin Commission (SRBC), which operates under a compact that is nearly identical to DRBC’s and contains an identical “Penal Sanction” clause, has effectively applied an “SRBC Civil Penalty Matrix” that correlates penalty or settlement ranges of \$50-\$250 for violations deemed minor, \$251-\$750 for violations deemed moderate, and \$751-\$1,000 for violations deemed severe, with five factors – namely, previous violations, intent, adverse environmental impacts, cooperation and economic benefit – as guidance in determining a recommended penalty or settlement amount; and

WHEREAS, in late November of 2009, the Commission published notice that it would consider adopting a “DRBC Civil Penalty Matrix” modeled after the SRBC matrix as guidance for the Commission and the basin community in determining the amount of the penalty or settlement in lieu of penalty that the Commission deems appropriate based upon consideration of the five factors listed above; and

WHEREAS, the Commission held a public hearing on the proposed “DRBC Civil Penalty Matrix” on December 9, 2009; and

WHEREAS, the Commission has determined that the proposed “DRBC Civil Penalty Matrix” constitutes useful guidance in determining the appropriate amount of a penalty or settlement in lieu of penalty; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that:

1. The attached “DRBC Civil Penalty Matrix” is hereby adopted as guidance to aid the Commission and the basin community in determining the appropriate amount of a penalty or settlement in lieu of penalty in accordance with Section 14.17 of the *Delaware River Basin Compact* and Article 7 of the *Rules of Practice and Procedure*.
2. The attached document is intended to supplement existing requirements; it does not constitute an adjudication or a regulation and shall not affect regulatory requirements. The attached document is a policy statement which establishes a framework within which the Commission will exercise administrative discretion in the future; however the Commission reserves the discretion to deviate from this policy statement if circumstances warrant.

/s/ Katherine E. Bunting-Howarth

Katherine E. Bunting-Howarth
Acting Chairwoman *pro tem*

/s/ Pamela M. Bush

Pamela M. Bush, Esquire, Commission Secretary

ADOPTED: December 9, 2009



Delaware River Basin Commission

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DRBC CIVIL PENALTY MATRIX
Penalties per Day per Violation*

In accordance with the Section 2.7.8 of the *Rules of Practice and Procedure*, the Commission may enter into a settlement with a suspected violator in lieu of seeking a judge-imposed penalty. The Penalty Matrix is intended to guide the DRBC staff in recommending a settlement amount to the Commissioners and if necessary, a penalty amount to the court.

| | Minor: \$50-\$250 | Moderate: \$251-\$750** | Severe: \$751-\$1,000** |
|--------------------------------------|--------------------------------------|--|---|
| Previous Violations | No previous violations | One previous violation | Multiple previous violations |
| Intent | Non-willful, non-negligent | Non-willful, negligent | Willful |
| Adverse Environmental Impacts | No adverse environmental impacts | Limited adverse environmental impacts | Major adverse environmental impacts |
| Cooperation | Excellent cooperation/quick response | General cooperation and some delay in compliance | Little or no cooperation/slow response |
| Economic Benefit | No economic benefit | Minor economic benefit | Substantial economic benefit relative to cost of compliance |

* §14.17 of the *Compact* provides that "... in the event of a continuing offense each day of such violation, attempt, or conspiracy shall constitute a separate offense." Section 14.17 provides that violators "shall be liable to a penalty of not less than \$50 nor more than \$1,000 to be fixed by the court."

** Satisfying any single criterion in either the "Moderate" or "Severe" category places a violation in the higher category.

ADDITIONAL GUIDANCE

The phrase “**limited adverse environmental impact**” means that the injury to flora and fauna and/or the impairment of habitat is small and/or temporary; and that the risk or actual harm to public health, safety or welfare is small.

The phrase “**major adverse environmental impact**” means that the injury to flora and fauna is substantial, such as a large fish kill or widespread or long-term impairment of habitat; or that the risk or harm to public health, safety or welfare is widespread, long-term, or severe.